

AMENDED IN ASSEMBLY JUNE 19, 2006

AMENDED IN SENATE MAY 2, 2006

**SENATE BILL**

**No. 1745**

---

**Introduced by Senator Kuehl**

February 24, 2006

---

An act ~~relating to domestic violence~~ to amend Section 12926 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 1745, as amended, Kuehl. Employment and housing discrimination: *sex*.

~~Under the~~

*The California Fair Employment and Housing Act; makes it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age. The act also makes it unlawful to engage in specified discriminatory practices in housing accommodations on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or sexual orientation.*

Existing law makes it a crime to engage in specified acts of domestic violence, sexual assault, and stalking.

~~This bill would declare the intent of the Legislature to develop legislation that would protect victims of domestic violence, sexual assault, and stalking in their homes and prohibit discrimination against these victims in housing and employment~~ *provide that, for purposes of the act, sex discrimination also includes discrimination against a*

person because he or she is a victim of domestic violence, sexual assault, or stalking, as defined.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. It is the intent of the Legislature to develop~~  
2     ~~legislation that would protect victims of domestic violence,~~  
3     ~~sexual assault, and stalking in their homes and prohibit~~  
4     ~~discrimination against these victims in housing and employment.~~

5     ~~SECTION 1. The amendments to Section 12926 of the~~  
6     ~~Government Code made by this act shall not be construed to~~  
7     ~~enlarge or diminish a landlord's ability to exercise his or her~~  
8     ~~rights under subdivision (4) of Section 1161 of the Code of Civil~~  
9     ~~Procedure.~~

10    ~~SEC. 2. Section 12926 of the Government Code is amended to~~  
11    ~~read:~~

12    12926. As used in this part in connection with unlawful  
13    practices, unless a different meaning clearly appears from the  
14    context:

15    (a) "Affirmative relief" or "prospective relief" includes the  
16    authority to order reinstatement of an employee, awards of  
17    backpay, reimbursement of out-of-pocket expenses, hiring,  
18    transfers, reassignments, grants of tenure, promotions, cease and  
19    desist orders, posting of notices, training of personnel, testing,  
20    expunging of records, reporting of records, and any other similar  
21    relief that is intended to correct unlawful practices under this  
22    part.

23    (b) "Age" refers to the chronological age of any individual  
24    who has reached his or her 40th birthday.

25    (c) "Employee" does not include any individual employed by  
26    his or her parents, spouse, or child, or any individual employed  
27    under a special license in a nonprofit sheltered workshop or  
28    rehabilitation facility.

29    (d) "Employer" includes any person regularly employing five  
30    or more persons, or any person acting as an agent of an  
31    employer, directly or indirectly, the state or any political or civil  
32    subdivision of the state, and cities, except as follows:

1 “Employer” does not include a religious association or  
2 corporation not organized for private profit.

3 (e) “Employment agency” includes any person undertaking for  
4 compensation to procure employees or opportunities to work.

5 (f) “Essential functions” means the fundamental job duties of  
6 the employment position the individual with a disability holds or  
7 desires. “Essential functions” does not include the marginal  
8 functions of the position.

9 (1) A job function may be considered essential for any of  
10 several reasons, including, but not limited to, any one or more of  
11 the following:

12 (A) The function may be essential because the reason the  
13 position exists is to perform that function.

14 (B) The function may be essential because of the limited  
15 number of employees available among whom the performance of  
16 that job function can be distributed.

17 (C) The function may be highly specialized, so that the  
18 incumbent in the position is hired for his or her expertise or  
19 ability to perform the particular function.

20 (2) Evidence of whether a particular function is essential  
21 includes, but is not limited to, the following:

22 (A) The employer’s judgment as to which functions are  
23 essential.

24 (B) Written job descriptions prepared before advertising or  
25 interviewing applicants for the job.

26 (C) The amount of time spent on the job performing the  
27 function.

28 (D) The consequences of not requiring the incumbent to  
29 perform the function.

30 (E) The terms of a collective bargaining agreement.

31 (F) The work experiences of past incumbents in the job.

32 (G) The current work experience of incumbents in similar  
33 jobs.

34 (g) “Labor organization” includes any organization that exists  
35 and is constituted for the purpose, in whole or in part, of  
36 collective bargaining or of dealing with employers concerning  
37 grievances, terms or conditions of employment, or of other  
38 mutual aid or protection.

39 (h) “Medical condition” means either of the following:

1 (1) Any health impairment related to or associated with a  
2 diagnosis of cancer or a record or history of cancer.

3 (2) Genetic characteristics. For purposes of this section,  
4 “genetic characteristics” means either of the following:

5 (A) Any scientifically or medically identifiable gene or  
6 chromosome, or combination or alteration thereof, that is known  
7 to be a cause of a disease or disorder in a person or his or her  
8 offspring, or that is determined to be associated with a  
9 statistically increased risk of development of a disease or  
10 disorder, and that is presently not associated with any symptoms  
11 of any disease or disorder.

12 (B) Inherited characteristics that may derive from the  
13 individual or family member, that are known to be a cause of a  
14 disease or disorder in a person or his or her offspring, or that are  
15 determined to be associated with a statistically increased risk of  
16 development of a disease or disorder, and that are presently not  
17 associated with any symptoms of any disease or disorder.

18 (i) “Mental disability” includes, but is not limited to, all of the  
19 following:

20 (1) Having any mental or psychological disorder or condition,  
21 such as mental retardation, organic brain syndrome, emotional or  
22 mental illness, or specific learning disabilities, that limits a major  
23 life activity. For purposes of this section:

24 (A) “Limits” shall be determined without regard to mitigating  
25 measures, such as medications, assistive devices, or reasonable  
26 accommodations, unless the mitigating measure itself limits a  
27 major life activity.

28 (B) A mental or psychological disorder or condition limits a  
29 major life activity if it makes the achievement of the major life  
30 activity difficult.

31 (C) “Major life activities” shall be broadly construed and shall  
32 include physical, mental, and social activities and working.

33 (2) Any other mental or psychological disorder or condition  
34 not described in paragraph (1) that requires special education or  
35 related services.

36 (3) Having a record or history of a mental or psychological  
37 disorder or condition described in paragraph (1) or (2), which is  
38 known to the employer or other entity covered by this part.

39 (4) Being regarded or treated by the employer or other entity  
40 covered by this part as having, or having had, any mental

1 condition that makes achievement of a major life activity  
2 difficult.

3 (5) Being regarded or treated by the employer or other entity  
4 covered by this part as having, or having had, a mental or  
5 psychological disorder or condition that has no present disabling  
6 effect, but that may become a mental disability as described in  
7 paragraph (1) or (2).

8 “Mental disability” does not include sexual behavior disorders,  
9 compulsive gambling, kleptomania, pyromania, or psychoactive  
10 substance use disorders resulting from the current unlawful use  
11 of controlled substances or other drugs.

12 (j) “On the bases enumerated in this part” means or refers to  
13 discrimination on the basis of one or more of the following: race,  
14 religious creed, color, national origin, ancestry, physical  
15 disability, mental disability, medical condition, marital status,  
16 sex, age, or sexual orientation.

17 (k) “Physical disability” includes, but is not limited to, all of  
18 the following:

19 (1) Having any physiological disease, disorder, condition,  
20 cosmetic disfigurement, or anatomical loss that does both of the  
21 following:

22 (A) Affects one or more of the following body systems:  
23 neurological, immunological, musculoskeletal, special sense  
24 organs, respiratory, including speech organs, cardiovascular,  
25 reproductive, digestive, genitourinary, hemic and lymphatic,  
26 skin, and endocrine.

27 (B) Limits a major life activity. For purposes of this section:

28 (i) “Limits” shall be determined without regard to mitigating  
29 measures such as medications, assistive devices, prosthetics, or  
30 reasonable accommodations, unless the mitigating measure itself  
31 limits a major life activity.

32 (ii) A physiological disease, disorder, condition, cosmetic  
33 disfigurement, or anatomical loss limits a major life activity if it  
34 makes the achievement of the major life activity difficult.

35 (iii) “Major life activities” shall be broadly construed and  
36 includes physical, mental, and social activities and working.

37 (2) Any other health impairment not described in paragraph  
38 (1) that requires special education or related services.

39 (3) Having a record or history of a disease, disorder, condition,  
40 cosmetic disfigurement, anatomical loss, or health impairment

described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of “disability” used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice.

(p) (1) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender, as defined in Section 422.56 of the Penal Code.

(2) *Discrimination based on “sex” also includes, but is not limited to, discrimination against a person because he or she is a victim of domestic violence, sexual assault, or stalking.*

(3) *For purposes of paragraph (2), the following terms have the following meanings:*

(A) *“Domestic violence” means any of the types of abuse set forth in Section 6211 of the Family Code.*

(B) *“Sexual assault” means any of the acts that constitute the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code.*

(C) *“Stalking” means any of the acts that constitute the crimes set forth in Section 646.9 of the Penal Code.*

(q) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(r) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

1     (3) The overall financial resources of the covered entity, the  
2     overall size of the business of a covered entity with respect to the  
3     number of employees, and the number, type, and location of its  
4     facilities.

5     (4) The type of operations, including the composition,  
6     structure, and functions of the workforce of the entity.

7     (5) The geographic separateness, administrative, or fiscal  
8     relationship of the facility or facilities.

## O